(C. C. A. 2d Cir.); *In re Stokes*, 106 Fed. 312 (D. C.); *Dichas* v. *Barnes*, 140 Fed. 849 (C. C. A. 6th Cir.). *Contra, In re Bertenshaw*, 157 Fed. 363 (C. C. A. 8th Cir.). But it practically denies the expression of the entity theory of partnership in the Bankruptcy Act of 1898. That theory would lead to a contrary result, since the court of bankruptcy would have no right to administer any property which does not belong to the bankrupt. *In re Bertenshaw*, 157 Fed. 363 (C. C. A. 8th Cir.). See 18 HARV. L. REV. 495; 20 HARV. L. REV. 589, 594; 19 HARV. L. REV. 615. The case also decides that it is impossible for the firm to be insolvent so long as any of its members remain able to pay its debts, a necessary result of the aggregate theory of partnership adopted by the court. *Vaccaro* v. *Security Bank*, 103 Fed. 436 (C. C. A. 6th Cir.); *In re Blair*, 99 Fed. 76. Those who desired to see a recognition of the entity theory in the act would of course have reached a contrary result. *In re Bertenshaw*, 157 Fed. 363 (C. C. A. 6th Cir.). See COLLIER, BANKRUPTCY, 4 ed., 119; 18 HARV. L. REV. 495, 498. A recent decision in the Federal District Court for Southern New York decided after the principal case but not citing it, reaches the same result, because the court felt bound by authority, arguing nevertheless for the adoption of the entity theory. *In re Samuels Lesser. Ex parte Quinn*, 30 Am. B. R. 293 (D. C. for So. N. Y.).

BANKS AND BANKING — DEPOSITS: LIABILITY TO DEPOSITOR — DEPOSIT TO PERSONAL ACCOUNT OF CHECK PAYABLE TO TRUSTEE. — The defendant bank allowed a guardian to deposit to his personal account a check which, to the knowledge of the bank, represented guardianship funds. The guardian later checked out his entire deposit and absconded. *Held*, that the bank is liable to the surety on the guardian's bond. *United States Fidelity & Guaranty Co.* v. *People's Bank*, 157 S. W. 414 (Tenn.).

Ordinarily a trustee who deposits trust funds to his personal account commits a breach of trust. *McAllister* v. *Commonwealth*, 30 Pa. 536; *Booth* v. *Wilkinson*, 78 Wis. 652, 47 N. W. 1128. *Contra, Goodwin* v. *American National Bank*, 48 Conn. 550. Such a form of deposit in many cases may cause the *cestui* great difficulty in establishing his right to this specific fund. The deceiving appearance may induce creditors of the trustee to attach it, or, in case of the trustee's death, may induce his executor to claim it, thus greatly embarrassing the administration of the trust. *Wagner* v. *Coen*, 41 W. Va. 351, 23 S. E. 735; *School District* v. *First National Bank*, 102 Mass. 174. Although a bank must honor checks drawn on it by depositing trustees without inquiry as to the intended use of the money, and is therefore not liable for subsequent misappropriation by the trustee, yet, if it knowingly assists a trustee in a breach of trust by allowing a misuse of banking facilities it is liable to the *cestui* for loss caused thereby. This assistance may be by transferring funds from the separate trust account to the personal account of the trustee, or by setting off a deposit of trust funds against a debt due the bank from the trustee. Or it may consist in accepting a deposit of trust funds to the trustee's personal account. *Allen* v. *Puritan Trust Co.*, 211 Mass. 409, 97 N. E. 916; *Bank of Hickory* v. *McPherson*, 59 So. 934 (Miss.); *Boone County Bank* v. *Byrum*, 68 Ark. 71, 56 S. W. 532. An apparent conflict between the cases as to the bank's liability in the last instance may perhaps be explained by a consideration of the nature of the trust involved. In the case of an official trustee, as sheriff, commissioner, administrator, or guardian, the cases uniformly hold that mere notice to the bank that the fund deposited is held in trust will render it liable if harm results from an improper form of deposit. This is doubtless due to the fact that an official trustee never has a right to deposit the funds to his private account. But where the bank merely knows that the deposit consists of private trust funds, it cannot be held liable for permitting such a deposit, as by the terms of the trust the trustee may have the right to use that form of deposit. *Batchel-*

der v. *Central National Bank of Boston*, 188 Mass. 25, 73 N. E. 1024; *Ashton* v. *Atlantic Bank*, 3 Allen (Mass.) 217. Where the defendant knows, as it did in the principal case from the fact that he was a guardian, that the trustee has no authority to deposit to his personal account, it is properly held liable. *Duckett* v. *National Mechanics' Bank*, 86 Md. 400, 38 Atl. 983.

BILLS AND NOTES — DEFENSES — INTOXICATION AND INSANITY. — The defendant signed a note as accommodation co-maker while in a state of complete intoxication. *Held*, that a holder in due course cannot recover. *Green* v. *Gunsten*, 142 N. W. 261 (Wis.). See NOTES, p. 164.

BILLS AND NOTES — RIGHTS OF HOLDER AGAINST GARNISHING CREDITOR OF DRAWER. — A depositor drew a check on the R. bank, for a smaller amount than his deposit, in favor of the M. bank. Before M. sent the check to R. for payment, a creditor of the depositor garnished the R. bank and M. intervened. *Held*, that the intervener is entitled to the amount of the check from the deposit in the R. bank. *Farrington* v. *F. E. Fleming Commission Co.*, 142 N. W. 297 (Neb.).

A check against a specified account, or for the whole deposit, or when accompanied by an assignment agreement, has been held to be an equitable assignment *pro tanto* of the depositor's claim. *Fortier* v. *Delgado & Co.*, 122 Fed. 604; *Taylor's Estate*, 154 Pa. St. 183, 25 Atl. 1061; *Throop Grain Elevator Co.* v. *Smith*, 110 N. Y. 83. But these are only exceptions to the common-law principle accepted in the great majority of jurisdictions that a check is not an assignment, the payee having no more right against the drawee than on any other unaccepted bill of exchange. *Hopkinson* v. *Forster*, L. R. 19 Eq. 74; *O'Connor* v. *Mechanics' Bank*, 124 N. Y. 324. A few states, including Nebraska, took the opposite view. *Fonner* v. *Smith*, 31 Neb. 107, 47 N. W. 632. If the check is not an assignment, the garnishing creditor of the depositor prevails against the holder of the check who has no claim upon the funds. *Dickenson* v. *Coates*, 79 Mo. 250; *Kuhn* v. *Warren Savings Bank*, 11 Atl. 440 (Pa.). The Negotiable Instruments Law, § 189, adopted in Nebraska, expressly provides that a check is not an assignment. Contrary to the principal case, Kentucky, which formerly held a check to be an assignment, has recognized that the adoption of this statute changed the old law. *Taylor's Adm'r* v. *Taylor's Assignees*, 78 Ky. 470; *Boswell* v. *Citizens Savings Bank*, 123 Ky. 485, 490, 96 S. W. 797, 799. The principal case follows the old minority view and is directly opposed to the express words of the Negotiable Instruments Law.

CARRIERS — DISCRIMINATION AND OVERCHARGE — MISTAKE: LIABILITY FOR NEGLIGENCE FOR QUOTING TOO HIGH A RATE BY MISTAKE. — A carrier quoted a rate to a shipper which by error was less than that published in accordance with sec. 6 of the Interstate Commerce Act. The shipper in reliance made a contract for the sale of certain cotton seed, and loaded it on cars. Later the carrier notified the shipper that a mistake had been made and quoted a new rate, which by a second mistake was higher than the published rate. The shipper refused to ship, but stated that he would have shipped at the correct rate and sued for lost profits. *Held*, that he may recover. *Aldrich* v. *Southern Ry. Co.*, 79 S. E. 316 (S. C.).

The case is unquestionably sound in holding the carrier liable for refusing to accept at a reasonable rate the shipment tendered to it. *Pickford* v. *Grand Junction Ry. Co.*, 8 M. & W. 372. The published rate is held legally to be the only reasonable one. *Texas & P. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 27 Sup. Ct. 350. The case, however, is made to depend solely on the actual tender of the goods, and recovery would have been denied if the shipper's remedy had been dependent merely on the negligence of the carrier.